

PRESIDING OFFICER'S
RULING NO. MC2004-3/1

UNITED STATES OF AMERICA
POSTAL RATE COMMISSION
WASHINGTON, DC 20268-0001

Rate and Service Changes To Implement
Functionally Equivalent Negotiated Service
Agreement With Bank One Corporation

Docket No. MC2004-3

PRESIDING OFFICER'S RULING
ESTABLISHING PROCEDURAL SCHEDULE

(Issued July 23, 2004)

Prehearing Conference. The following procedural issues were discussed at the July 15, 2004 prehearing conference. The late interventions of the National Postal Policy Council, the National Association of Postmasters of the United States and the National Newspaper Association were accepted. Agreement was reached that an additional week will be provided to allow participants time to examine whether or not to request a hearing. The settlement coordinator would report to the Commission on this issue by July 22, 2004 (and report on progress towards settlement every two weeks thereafter). Discovery will be allowed through August 5, 2004. The Postal Service has agreed to provide answers within 10 days and objections within seven days. The Commission requested that comments in regard to the limitation of issues be submitted in writing, with written responses allowed thereafter. No party voiced an objection to proceeding under the rules for functionally equivalent Negotiated Service Agreements, although one participant was still considering the issue.

Outstanding Motions. Bank One filed Motion of Bank One Corporation for Late Acceptance of the Testimony of Lawrence G. Buc, June 28, 2004. PRC Order No. 1411 directed participants to present any objection to the late acceptance of witness Buc's

testimony at the prehearing conference. No objections were presented. This motion is granted.

Bank One also filed Motion of Bank One Corporation for Late Acceptance of Its Response to Office of Consumer Advocate Interrogatory OCA/BOC-T1-1(a) and (c), July 14, 2004. This motion was unopposed, and shall be granted.

Procedural Schedule. The Commission's rules require the Commission to make decisions as to the procedural path that this docket will take after the conclusion of the prehearing conference. The first decision is whether to apply the more expedited rules for functionally equivalent Negotiated Service Agreements, rule 196, or whether to consider the Postal Service's request as a new baseline Negotiated Service Agreement, rule 195. Although one participant was still considering the issue, no participant had a specific objection to treating the Postal Service's request as a request for a functionally equivalent Negotiated Service Agreement. Until such time that new information is presented which requires a change of direction, the Commission will consider the Postal Service's request as a request for a functionally equivalent Negotiated Service Agreement, and proceed under rule 196.

Rule 196 provides two procedural paths which depend on whether or not a hearing is scheduled. "If the Commission determines that it is appropriate to proceed under § 3001.196, a schedule will be established which allows a recommended decision to be issued not more than (1) 60 days after the determination is made to proceed under § 3001.196, if no hearing is held; or (2) 120 days after the determination is made to proceed under § 3001.196, if a hearing is scheduled." Rule 196(d). Cognizant that rule 196 provides for an expedited docket, the Commission urged participants to file supporting written arguments in advance of the prehearing conference in regard to the identification of issues that would indicate the need for a hearing, and any objection to the Postal Service's proposal for limiting issues. PRC Order No.1409 at 8.

At the prehearing conference, the settlement coordinator requested an additional week to conduct discussions on the need for a hearing. Additional time also was provided to allow participants to explore what issues were contested in this docket.

The Commission is aware that this is the first application of the new procedural rules for Negotiated Service Agreements, and as such will allow some leeway in their implementation. However, if the Commission is to issue a decision in as little as 60 days, it generally will be necessary for all participants to be prepared to discuss limitation of issues and the need for a hearing at an early date.

Further complicating the timing of this docket is the July 1, 2004 merger of Bank One and J.P. Morgan Chase. When the merger was a mere possibility, the financial analysis presented by the co-proponents arguably might have supported the request to recommend the Negotiated Service Agreement. However, the mere possibility of a merger has been replaced with the reality of a merger. From reviewing interrogatory responses, it is apparent that the merger will have an important effect upon the Negotiated Service Agreement although the full ramifications are not yet known. The J.P. Morgan Chase volumes appear substantial when compared with the Bank One volumes and potentially could have a considerable impact on the financial analysis. Discovery on this issue is ongoing and the Commission also may request further information from the co-proponents. Hopefully, adequate relevant data will be made available to allow for an informed Commission decision within the appropriate period.

To assure that the Commission can issue its decision within the allotted time, and until such time as the question of limitation of issues is addressed (including the merger issue) so that the need for a hearing can be fully established, a hearing on the co-proponent's direct case shall be tentatively scheduled for either September 8, 2004 or September 9, 2004. The co-proponents shall agree upon one of the two dates that is most convenient for their witnesses and associated counsel, and inform the Commission of that date by August 4, 2004. If at a later time it is determined that a hearing is not necessary, the hearing will be cancelled and the schedule appropriately modified.

The Commission granted additional time for participants to provide written comment and responses on the limitation of issues question. These comments and responses on the limitation of issues will be expected to identify and discuss specific issues in addition to the issues that the rules list as always open for consideration that must be considered in this docket. Written comments in regard to the limitation of issues shall be submitted by July 29, 2004, with written responses due by August 5, 2004.

It is ordered:

1. Motion of Bank One Corporation for late Acceptance of the Testimony of Lawrence G. Buc, June 28, 2004, is granted.
2. Motion of Bank One Corporation for Late Acceptance of Its Response to Office of Consumer Advocate Interrogatory OCA/BOC-T1-1(a) and (c), July 14, 2004, is granted.
3. Docket No. MC2004-3 shall proceed under rule 196 for functionally equivalent Negotiated Service Agreements.
4. A hearing on the co-proponent's direct case is tentatively scheduled for September 8 or 9, 2004. The co-proponents shall agree upon one of the two dates that is most convenient for their witnesses and counsel, and inform the Commission of that date by August 4, 2004.
5. Written comments in regard to the limitation of issues shall be submitted by July 29, 2004, with written responses due by August 5, 2004.

George Omas
Presiding Officer